

IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE SOUTHERN DISTRICT OF TEXAS
 HOUSTON DIVISION

In re	§
	§
BIGLER LP;	§ Case No. 09-38188
BIGLER LAND, LLC;	§ Case No. 09-38189
BIGLER PETROCHEMICAL, LP;	§ Case No. 09-38190
BIGLER PLANT SERVICES, LP;	§ Case No. 09-38192
BIGLER TERMINALS, LP	§ Case No. 09-38194
	§
	§ Chapter 11
Debtors.	§
	§ JOINTLY ADMINISTERED
	§ UNDER CASE NO. 09-38188

**OBJECTION OF AMEGY BANK NATIONAL ASSOCIATION
 TO EMERGENCY MOTION OF CERTAIN M&M LIEN CLAIMANTS
 FOR APPOINTMENT OF M&M LIEN CLAIMANTS COMMITTEE**
[Related Docket No. 74]

Amegy Bank National Association, for itself and in its capacity as administrative and collateral agent (“Amegy”) for certain other prepetition secured lenders under that certain Amended and Restated Credit Agreement dated April 17, 2008, and that certain Loan Agreement dated May 18, 2007, files this Objection (the “Objection”) to the Motion of Certain M&M Lien Claimants for Appointment of M&M Lien Claimants Committee (the “Motion”). In support of the Objection, Amegy respectfully states as follows:

1. Amegy objects to the request made in the Motion for entry of an Order directing the appointment of an official committee of M&M Lien Claimants¹ for many of the same reasons set forth in the respective objections of the captioned debtors (collectively, the “Debtors”) and the Official Committee of Unsecured Creditors (the “Committee”). Appointment of such a committee is unfounded because the M&M Lien Claimants are and will continue to be adequately represented by the Committee in these cases. Further, such appointment is not

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

justified by the nature of these cases and will unnecessarily drain scarce estate assets with no concomitant benefit. As evidenced by the few hearings to date in these cases, the M&M Lien Claimants are represented by capable counsel, who are more than sufficient to represent their clients' interests before this Court. *See In re Hill Stores Co.*, 137 B.R. 4, 8 (Bankr. S.D.N.Y. 1992)(noting that where the movants were already represented by counsel, the request for appointment of an additional committee was determined not to be "a dispute about adequate representation, but about adequate assurance of alternative compensation"). For these reasons, and the reasons set forth in the Debtors' and Committee's objections, the Motion must be denied.

2. There is no dispute as to the standard for appointment of an additional committee. Section 1102(a) of the Bankruptcy Code provides in relevant part that "the court may order the appointment of additional committees of creditors or equity security holders if necessary to assure adequate representation of creditors and equity security holders." 11 U.S.C. § 1102(a)(2). The M&M Lien Claimants bear the burden of proving that they are not adequately represented. *In re Winn-Dixie Stores, Inc.*, 326 B.R. 853, 857 (Bankr. M.D. Fla 2005). The M&M Lien Claimants are unable to satisfy this burden.

3. In *In re Garden Ridge Corp.*, No. 04-10324 (DDS), 2005 WL 523129 (Bankr. D. Del. March 2, 2005), the court denied a motion seeking the appointment of an official landlords' committee on the basis that if a landlord's lease was assumed, it would be paid in full in connection with its cure claim, while if such lease was rejected, the landlord would be an unsecured creditor represented by the unsecured creditors' committee. *Id.* at *4. Such is the case here. The M&M Lien Claimants, to the extent they are secured creditors, will enjoy the benefits afforded them under their liens and section 506 of the Bankruptcy Code. If they are

undersecured and possess unsecured claims, then such interests are more than adequately represented by the Committee.

4. The appointment of an additional committee in these cases would substantially increase administrative costs and drain scarce estate assets, with no resulting benefit. The Debtors' estates should not be burdened with the added expense of an additional committee of allegedly secured creditors, with their own professionals, whose sole mandate is to establish the conflicting claims of its constituents, rather than seeking to benefit the estate as whole. *See In re Winn-Dixie.*, 326 B.R. at 857-858. Amegy would not oppose, however, the addition of one or more M&M Lien Claimants to the existing Committee, should any such creditors be inclined to serve.

5. For these reasons, and the reasons set forth in the objections of the Debtors and the Committee, the Motion should be denied.

Respectfully submitted this 24th day of November 2009.

/s/ James Matthew Vaughn
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Counsel for Amegy Bank National Association

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served by first class United States mail, postage prepaid, on the 24th day of November 2009, on the parties listed on the attached Service List.

/s/ James Matthew Vaughn
James Matthew Vaughn

SERVICE LIST

Debtor

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Debtor's Counsel

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Intertek
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Dept. 3003
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Dallas, TX 75320-1607

20 Largest Creditors

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Geismar, LA 70734-0119

Mammoet USA Inc.
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Rossharon, TX 77583

Baker Hughes
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Sugar Land, TX 77478

Mobile Mini Inc.
P.O. Box 79149
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BASF Corporation
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Rain for Rent
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Billipp/Portwest LP
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